

**MEMO ENDORSED****Federal Defenders  
OF NEW YORK, INC.**

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March 13, 2023

**BY ECF**

Honorable Valerie E. Caproni  
United States District Judge  
Southern District of New York  
New York, New York 10007

**Re: United States v. Felix Gomez  
22 Cr. 176 (VEC)**

Dear Judge Caproni:

I am the attorney for Felix Gomez, the defendant in the above-captioned case, and write to request that the Court order the production of Mr. Gomez to the courthouse and release Mr. Gomez on a temporary bond to allow Mr. Gomez to visit the United States Post Office, located at 90 Church Street, New York, NY, on March 15, 2023 at 12:15pm so he can apply for a United States passport.

Mr. Gomez needs to apply for a passport to establish that he is, in fact, a United States citizen and that the Presentence Report (“PSR”) is wrong in stating that he is a legal permanent resident. *See* PSR at p. 2. Designation as a noncitizen by the Bureau of Prisons based on the inaccurate PSR would adversely affect Mr. Gomez’ eligibility for BOP programs. He might also improperly be subject to an ICE detainer without valid proof that he legally derived citizenship through his father’s naturalization.

Isaac Wheeler, the immigration specialist in our office, has prepared a passport application with all necessary supporting documentation. Additionally, I have personally secured Mr. Gomez an appointment at the Post Office for March 15, 2023 at 12:15pm for Mr. Gomez to submit his passport application. *See* Passport Application Appointment Confirmation, attached as Exhibit A. State Department regulations require that anyone applying for the first time for a passport must do so in person before a designated passport acceptance agent and must personally verify the application by oath or affirmation before that agent. 22 C.F.R. 51.21(a). The closest designated passport acceptance agency with appointments available is the Post Office at 90 Church Street. Members of our office will escort Mr. Gomez to the Post Office to

assist him in submitting his passport application and then return with him back to the courthouse for his surrender back into custody.

Pretrial Services Officer Dominique Jackson does not oppose this request. As of this afternoon, AUSA Edward Robinson has submitted a response to the Court's March 8, 2023 order that his office now opposes the original March 7, 2023 application requesting that the US Marshals produce Mr. Gomez to the Post Office.<sup>1</sup> Despite numerous attempts at contacting AUSA Robinson, the defense is unaware of the prosecution's position as to this new application. Given the significance of establishing Mr. Gomez's citizenship prior to sentencing and the current inaccuracies reflected in the PSR, the defense requests that the court grant this request to allow Mr. Gomez the opportunity to obtain his United States passport in advance of sentencing to ensure there is no doubt that Mr. Gomez is a United States citizen.

I thank you for your consideration of this request.

Respectfully Submitted,

/s/ Marisa K. Cabrera  
Marisa K. Cabrera, Esq.  
Assistant Federal Defender  
Tel.: (917) 890-7612

cc: AUSA Edward Robinson (by ECF)

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<sup>1</sup> Per this Court's March 8, 2023 order in response to the defense's initial March 7, 2023 application, the prosecution was ordered "to consult with the U.S. Marshals to determine if they have any objections." Rather than informing defense counsel of the US Marshals' position, AUSA Robinson informed counsel in an email this afternoon that "[u]pon further reflection, and after consultation with the USMS, the Government opposes the request." Indeed, at the time of this filing, and despite numerous phone call attempts, the defense is still unaware of the position of the US Marshals and is left no option but to seek a temporary release bond.

Application DENIED. Magistrate Judge Netburn denied Mr. Gomez's bail request because of his risk of flight and danger to the community. See Minute Entry, Dkt. 4. While the Court does not question the good faith of the Federal Defenders, they are not law enforcement. For the same security reasons the U.S. Marshals traditionally resist transporting detained defendants to appointments out of a secure facility, having Mr. Gomez in the Federal Defenders' custody poses significant security issues.

The Court is willing to adjourn Mr. Gomez's sentencing if his counsel seeks more time to pursue alternative options, such as obtaining a certificate of citizenship from U.S. Citizenship and Immigration Services.

SO ORDERED.

 03/13/2023

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE